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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

THIRD APPELLATE DISTRICT

(Sacramento)

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THE PEOPLE,

Plaintiff and Respondent,

v.

KEVIN CHARLES CHRISTENSEN,

Defendant and Appellant.

C081137

(Super. Ct. No. 15F06875)

In exchange for a stipulated sentence, defendant Kevin Charles Christensen pled no contest to various charges, and the trial court sentenced him to a three-year four-month aggregate term. After filing a timely appeal from that sentence, defendant successfully petitioned the trial court to recall his sentence pursuant to Penal Code section 1170, subdivision (d).

On appeal, appointed counsel for defendant has asked this court to review the record to determine whether there are any arguable issues on appeal. (*People v. Wende*

(1979) 25 Cal.3d 436.) However, because the judgment appealed from has been recalled, there is no basis for an appeal, and we will therefore dismiss the appeal as moot.

### BACKGROUND

Defendant was found with methamphetamine for sale. On November 20, 2015, he pled no contest to possession for sale and admitted to committing the crime while on bail for another crime. The trial court imposed a three-year four-month aggregate term.

Ten days later, defendant wrote the trial court requesting a recall of his sentence. A month and a half later, he filed a notice of appeal. He then wrote the trial court again requesting a recall.

On February 4, 2016, two weeks after the notice of appeal was filed, the trial court held a hearing on defendant's request to recall his sentence. The trial court recalled the sentence, set aside defendant's plea, and reinstituted criminal proceedings.

### DISCUSSION

Ordinarily, filing an appeal divest the trial court of jurisdiction until the appeal is determined and remittitur issues. (*Portillo v. Superior Court* (1992) 10 Cal.App.4th 1829, 1834.) But exceptions exist. “[A] trial court is not divested of its limited jurisdiction under [Penal Code] section 1170, subdivision (d) to recall a sentence for modification within 120 days of the defendant's commitment by the filing of an appeal notice.” (*Id.* at p. 1836.)

Here, the trial court retained jurisdiction to recall defendant's sentence. And having done that, we will dismiss the appeal as moot.

## DISPOSITION

The appeal is dismissed as moot.

/s/  
Robie, Acting P. J.

We concur:

/s/  
Murray, J.

/s/  
Hoch, J.